

<p>USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>2/9/10</u></p>

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
INDIA.COM, INC.,

Plaintiff,

-v-

SANDEEP DALAL,

Defendant.

02 Civ. 0111 (DLC)

ORDER

-----X
SANDEEP DALAL,

Counterclaim-Plaintiff,

-v-

INDIA.COM, INC., EASYLINK SERVICES
CORPORATION, and INDIA HOLDINGS, INC.,

Counterclaim-Defendants.

-----X
DENISE COTE, District Judge:

Pursuant to the Opinion of December 30, 2009, the Clerk of Court entered judgment in favor of defendant and counterclaim-plaintiff Sandeep Dalal ("Dalal") on December 31, 2009. (Docket No. 114.) In accordance with Local Rule 54.1, Dalal timely filed a request to tax costs to recover \$10,591.55 for costs of transcripts and \$11,159.17 for exemplification and copying costs. On January 28, 2010, plaintiff and counterclaim-defendant India.com, Inc. ("ICI") timely filed an objection to

Dalal's request for a Bill of Costs. (Docket No. 115.) On January 29, ICI timely filed a Notice of Appeal of the December 31 judgment. (Docket No. 116.) Also on January 29, the Clerk of Court entered a Bill of Costs in the amount of \$21,749.72 in favor of Dalal. (Docket No. 117.)

On February 5, ICI moved to vacate, or in the alternative modify, the January 29 Bill of Costs pursuant to Rules 54(d)(1) and 60(a), Fed. R. Civ. P. (Docket No. 118.) Under Local Rule 54.1, costs are not to be taxed while a case is on appeal. ICI therefore argues that it was error for the Clerk of Court to enter a Bill of Costs since a Notice of Appeal had been timely filed. ICI further argues that the Bill of Costs should be reduced to a total of \$5,268.50, which reflects no costs being allowed for exemplification and copying costs and only \$5,268.50 allowed for transcript costs.

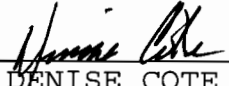
Although it appears that the Bill of Costs was erroneously entered due to clerical error, this Court no longer has jurisdiction to address ICI's motion to vacate or amend the Bill of Costs. A notice of appeal having been timely filed against the judgment that incorporates the assessment of costs, the matter is now before the Court of Appeals. This Court has no jurisdiction to modify a judgment that is on appeal. See Motorola Credit Corp. v. Uzan, 388 F.3d 39, 53 (2d Cir. 2004) (citing Griggs v. Provident Consumer Discount Co., 459 U.S. 56,

58 (1982)); see also New York State Nat'l Org. for Women v. Terry, 886 F.2d 1339, 1350 (2d Cir. 1989). Accordingly, it is hereby

ORDERED that ICI's February 5 motion to vacate or amend the Bill of Costs is denied for lack of jurisdiction. The parties are advised, however, that it would be possible to seek from the Court of Appeals a limited remand to permit this Court to address ICI's motion. The Court respectfully suggests that any such remand should provide instruction as to whether this Court is directed or permitted only to address ICI's motion to vacate the erroneously-entered Bill of Costs, or is directed or permitted to address the merits of ICI's request to amend the costs assessed.

SO ORDERED:

Dated: New York, New York
February 9, 2010



DENISE COTE
United States District Judge

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